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### Legal Instruments of State Practice and International Initiatives Undertaken to Fight Corruption in the Banking and Financial Sector

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*PROBLEMS OF INTERNATIONAL LAW*

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- Халқаро ҳуқуқ муаммолари ■  
■ Проблемы международного права ■

**N. Nodirkhonova**

**Legal instruments of State practice  
and International Initiatives undertaken  
to fight corruption in the banking  
and financial sector**

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In the fight against corruption, Uzbekistan purposefully focuses on international experience, effective foreign models, and combines various measures to counter this phenomenon. Domestic legislation in this area went through a rather lengthy process of formation. The study of foreign experience is one of the most important areas for obtaining information on what means, methods, and in what forms it is possible to create an atmosphere of intolerance to corruption and reduce the level of corruption crime. Learning and taking into account the practice of foreign states allows avoiding mistakes, contradictions in anti-corruption activities and choosing the right approaches in the anti-corruption strategy.

Today, corruption has no borders and the fight against corruption is already becoming a problem not only of one state, but of the entire world

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community. The world community has begun to take serious and necessary measures to eradicate corruption. As a rule, measures to combat corruption should include the adoption of international legal norms, the development of organizational tools and mechanisms aimed at preventing and combating corruption.

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A special system of relations between states is determined by international cooperation in the fight against corruption. Non-governmental and international governmental organizations, as well as transnational corporations and other organizations in the field of anti-corruption, determine a coherent policy, anti-corruption tactics and strategies, as well as the development of international agreements and treaties.

International anti-corruption actions are carried out at several levels. The main level is represented by UN documents. It is the United Nations that forms the global anti-corruption policy. For more than two decades, the problem of corruption has been in the field of view of the UN.

In support of this, a number of international documents on this issue can be cited: the UN Resolution “Corruption among Officials” (March 24, 1990), the International Code of Conduct for Government Officials (December 12, 1996), the UN Declaration «On Combating Corruption and Bribery in international commercial operations» (December 16, 1996), UN International Convention against Transnational Organized Crime (November 15, 2000), UN International Convention against Corruption (October 31, 2003), Council of Europe Convention «On criminal liability for corruption» (January 27, 1999), Council of Europe Convention «On Civil Liability for Corruption» (November 4, 1999), Model Law “On Combating Corruption” (Resolution of the Interparliamentary Assembly of CIS Member States, April 3, 1999 No. 13-4) [1].

In 1999, the Council of Europe created an international organization called GRECO - the “Group of States Against Corruption” [2], whose main goal is to help member countries fight corruption. GRECO establishes anti-corruption standards (requirements) for state activities and monitors the compliance of practices with these standards. The group helps identify weaknesses in national anti-corruption policies and proposes the necessary legislative, institutional or operational measures. GRECO provides a platform for the exchange of the best solutions in the field of detection and prevention of corruption.

The group consists of 49 states. Membership in GRECO is not limited to Europe, however, at present, the only non-European state in the group is the United States.

In July 2003, the African Union Convention on the Prevention and Combating of Corruption was adopted [3]. A distinctive feature of this convention is that it contains a number of measures that are aimed not only at combating corruption, but also at preventing this phenomenon.

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In Asia, unlike Europe, the level of international cooperation in the fight against corruption turned out to be much lower, the countries of the Asia-Pacific region, together with the OECD and the Asian Develop-

ment Bank, came to the so-called “anti-corruption consensus”, as well as agree on adherence to the principles of the UN Convention against Corruption .

By the beginning of the 21st century, the need for a single anti-corruption document became apparent. By this moment, it became possible for the world community

to conclude a global anti-corruption consensus, there was already a sufficient base of international anti-corruption treaties, and at the political level, reaching a common solution to develop a global anti-corruption policy was possible.

An important event in the field of international anti-corruption is the adoption of the UN Convention against Corruption of October 31, 2003 [4]. The Republic of Uzbekistan acceded to the UN Convention against Corruption on July 7, 2008 [5].

The UN Convention against Corruption consists of 71 articles, which are divided into 8 chapters. It is recognized that corruption is one of the main threats to sustainable development. This document provides the provision of general anti-corruption measures and mechanisms for the implementation of these measures.

Legal aspects of leading foreign countries’ experience in combating corruption in the banking and financial sphere are based on legislation, which comprises several groups of regulatory legal acts.

The first group includes basic documents that give a general idea of understanding the essence of the phenomenon of corruption in the country, define the main terminology and fixate the main directions of the anti-corruption policy (Sapin’s Law on Regulation of the Public Works Market of January 29, 1993 in France; the Law “On Public Serv-

ants”, “On Federal Personnel”, “On Combating Corruption” (1997) in Germany; Law of the Kyrgyz Republic “On Combating Corruption” (2012) [6].

The second group includes normative legal acts establishing liability for corruption offenses (Law «On the Disciplinary Regime of Public Service» in Germany, the Laws of Great Britain «On Bribery in Public Organi-

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zations» of 1889 and «On the Prevention of Corruption» of 1906 and 1916).

The third group consists of codes of ethics for civil servants (Code of Conduct for Civil Servants (1985) in Canada, Instruction on the Official Conduct of Civil Servants of the Australian Union, Code of Honor for Civil Servants of the Kyrgyz Republic (2005), Law «On the Ethics of Civil Servants» in Japan (2000), “Code of Ethics of the Eight Principles”, developed by Hu Jintao, PRC).

The fourth group of documents includes other normative legal acts regulating anti-corruption issues. One can single out in a separate group legislation on the procedure for performing public service, emphasizing its prestige and significance. The next measure is the creation of state structures to combat corruption. The institutionalization of the specialized anti-corruption agency was included as a separate section in the systemic anti-corruption strategy developed by World Bank experts in 2001. The experience of the European Union is remarkable in the fight against corruption in the financial and banking sector. Corruption is considered in the context of economic crimes in this case [7].

**The fundamental act on combating corruption crime and money laundering in the European Union, was the Convention on the Protection of the Financial Interests of the European Community of July 26, 1995**

Over the past decade, a rather impressive regulatory framework has been formed in the field of combating financial crimes within the framework of united Europe. The fundamental act, which concentrated the norms on combating corruption crime and money laundering in the European Union, was the Convention on the Protection of the Financial Interests of the European Community of July 26, 1995, as well as the joint Regulation of the Council of the EU and Euratom of December 18, 1995 “On protecting the financial interests of the European Communities” (N 2988/95) [8]. The Convention and its annexed protocols have defined what constitutes fraud, corruption and money laundering in the EU.

Georgia’s experience in the fight against corruption in the financial sector is particular among the post-Soviet countries. In particular, the success of the tax system reform in Georgia was largely achieved due to the increased mutual responsibility in the relationship between the client and the agent. Changes in the tax code and legislation reflected public expectations regarding rates, simplicity and fairness of taxes. Under the new system, the tax service (agent) provides high-quality services using electronic tools, such as filing reports and declarations in electronic form; simplified registration procedure; tax audits based on risk assess-

ment; and tax appeal systems. The client (taxpayer) is convinced that taxes must be paid. The general tax burden is acceptable, and the government is more efficient in providing public services than in the pre-reform period.

According to Transparency international, the states in which the mechanism for public service transparency has been formed are less vulnerable to corruption. As practice shows, the principle of openness makes a significant contribution to the prevention and suppression of corruption in the public service system of any state.

The experience of France in this direction is significant, where the Commission on the financial transparency of political life was created, which is designed to control the property status of French parliamentarians.

In accordance with the “single multi-purpose anti-corruption strategy” developed by World Bank staff, guaranteeing freedom of information and strengthening the role of the media as part of enhancing the participation of civil society are considered as one of the ways to combat corruption. In the Netherlands, all materials related to corruption, if they do not affect the national security system, are made available to the public without fail [9].

Undoubtedly, one of the important directions in the field of combating corruption is the fight against using the opportunities of the banking and financial sphere in money laundering. In this regard, the experience of the Financial Action Task Force on money laundering (FATF), an intergovernmental organization that develops global standards in the field

**One of the important directions in the field of combating corruption is the fight against using the opportunities of the banking and financial sphere in money laundering. (FATF).**

of combating money laundering and the financing of terrorism, as well as assessing the conformity of national systems to combat money laundering and terrorist financing of states with these standards, is noteworthy.

The FATF was established in 1989 by decision of the G7 countries and is the main international institution engaged in the de-

velopment and implementation of international standards in the field of combating money laundering and the financing of terrorism. FATF members are 35 countries and 2 organizations, observers - 20 organizations and 1 country.

The main tool of the FATF in implementing its mandate is 40 recommendations in the field of combating money laundering, which are audited on average once every 5 years, as well as 9 special recommendations in the field of combating the financing of terrorism.

In accordance with UN Security Council Resolution No. 1617 (2005), 40+9 FATF Recommendations are binding international standards for implementation by UN member states.

One of the main tools for implementing the FATF recommendations at the national level is the Financial Intelligence Unit (FIU), which is responsible for collecting and analyzing financial information within the country in order to identify flows of obtained illegally funds.

At the end of the 20th century, non-governmental and intergovernmental organizations began to actively develop anti-corruption documents. For example, in 1997, with the assistance of the Transparency International, OECD members adopted the Convention «Combating Bribery of Foreign State Persons in International Transactions». This convention (entered into force in February 1999) is dedicated to a specific issue - declaring a crime to give bribes to foreign government officials in carrying out commercial activities. Initially, this document was signed by 28 OECD member countries, and 5 countries that are not members of this organization. The advantage of this convention is that any state can join, regardless of whether it is in the OECD.

**In 1997, with the assistance of the Transparency International, OECD members adopted the Convention «Combating Bribery of Foreign State Persons in International Transactions».**

The participation of the Republic of Uzbekistan in the OECD program, the Anti-Corruption Network for Eastern Europe and Central Asia plays a vital role in the country's anti-corruption efforts. After the accession of the Republic of Uzbekistan to the «Istanbul Anti-Corruption Action Plan» in March 2010, the OECD provided the country with the necessary assessment of the actions taken in the fight against corruption, as well as a huge number of practical recommendations that contribute to the successful implementation of reforms in our country.

It is obvious that international cooperation in the fight against corruption is diverse and carried out in many areas. For example, the following types of cooperation can be distinguished: cooperation of international organizations, interstate cooperation, cooperation under the auspices of the UN, the activities of non-governmental organizations, the creation of an international legal framework for the fight against corruption, scientific cooperation, organizational cooperation and technical cooperation.

The analysis of international anti-corruption documents shows that the existing broad regulatory framework confirms the commitment of the world community to the principles of combating corruption, as well as the achievement of a global anti-corruption consensus.

**The participation of the Republic of Uzbekistan in the OECD program, the Anti-Corruption Network for Eastern Europe and Central Asia plays a vital role in the country's anti-corruption efforts.**

In general, it can be noted that the need for anti-corruption efforts is recognized by government agencies, business, and civil society organizations around the world. In order to effectively wage the fight against corruption, in particular in the banking and financial sector, there are a number of tools developed by the international community.

- ♦ Creation of specialized state anti-corruption agencies.
- ♦ Establishment of anti-corruption institutions.
- ♦ Strengthening legal institutions.
- ♦ Creation and application of codes of conduct for officials.
- ♦ Creation of national anti-corruption strategies.
- ♦ Carrying out the prevention of corruption by the following means:
  - public awareness; participation of media and journalists in investigations of corruption crimes; development of a mechanism for citizens to file complaints on corruption cases.
  - ♦ Creating codes of anti-corruption behavior for bank employees.
  - ♦ Use of force to fight corruption.
  - ♦ Conducting financial investigations, monitoring the movement of assets.
  - ♦ Protection of whistleblowers.
  - ♦ Development of anti-money laundering standards.

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